

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY JOHN BILLINGTON, ANDREW SIMON POPE, and
CHRISTIAN JON FLEUTY

Appeal No. 2005-1550
Application No. 09/543,164

ON BRIEF

Before THOMAS, HAIRSTON, and BARRETT, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 8, 13, 20, 25 and 27 through 32.

The disclosed invention relates to the change making capability of a vending machine.

Claim 8 is illustrative of the claimed invention, and it reads as follows:

8. A vending machine, which is operable to accept monetary units in a plurality of denominations, and to dispense change in at least one said denominations but not in at least one further denomination, the vending machine having display means arranged to give first and second indications that insufficient change may be available from the machine to a customer making a purchase, the first indication being given as a warning prior to a transaction being initiated when the amount of available change in the machine is less than the value of the highest-value among said at least one further denomination, and the second indication being given after a transaction has been initiated and a monetary unit has been deposited, the second indication being given in dependence on parameters including the money available for change and the value of the deposited monetary unit, each indication being produced in response to the detection of a respective set of conditions.

The references relied on by the examiner are:

Morun	5,566,807	Oct. 22, 1996
Gustin et al. (Gustin)	5,987,439 ¹	Nov. 16, 1999
Ramsey et al. (Ramsey)	6,055,521	Apr. 25, 2000
Tedesco et al. (Tedesco)	6,085,888	(effective filing date July 23, 1997) July 11, 2000
Walker et al. (Walker)	6,119,099	(effective filing date Nov. 10, 1997) Sept. 12, 2000 (filed Aug. 26, 1997)

Claims 8, 13, 20, 25 and 27 through 32 stand rejected under § 103(a) as being unpatentable over Morun.

Claims 8, 20, 25, 27 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tedesco.

¹ Although this reference is not included in the rejections of record, the examiner mentions it in the response to argument section of the answer. As stated in *In re Hoch*, 428 F.2d 1341, 1342, 166 USPQ 406, 407 (CCPA 1970), there is no excuse for not positively including a reference teaching in the statement of the rejection, especially since the teachings of the reference are used to support the examiner's position. The reference is not part of the rejection, and was not considered by this panel.

Claims 8, 20, 25, 27 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ramsey.

Claims 8, 13, 20, 25 and 27 through 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker.

Reference is made to the briefs and the answer for the respective positions of the appellants and the examiner.

OPINION

For all of the reasons expressed by the appellants, and for the additional reasons set forth infra, all of the rejections of record are reversed.

Morun discloses a vending machine in which "an overpay amount is calculated which is equal to the value of the lowest denomination coin having a coin tube minus the value of the lowest-value, non-tubed coin" (column 2, lines 1 through 4). The established overpay amount enables the vending machine to "accept coins, make change and vend a product while allowing a customer to pay slightly more than the vend price in order to receive the item" (column 2, lines 4 through 8). Morun recognizes that the overpay amount may be preset into the vending machine (column 11, lines 54 through 57). If change is available in Morun for all of the vend prices, then a high-value non-tubed coin is enabled. If change is not available, then the vending machine will not accept the high-value non-tubed coin (column 2, lines 9 through 24). A display on the vending machine

will instruct a customer to deposit lower denomination coins to increase the probability of acceptance of the coins (column 2, lines 24 through 31).

We agree with appellants' arguments (brief, pages 7 through 10) that the display in Morun does not provide the two different indications under different conditions (claim 8), the selection of a product of a different price after a displayed indication (claim 20), a display that provides an indication of the monetary unit that is prevented from being accepted by the vending machine (claim 25), and a display that provides a warning prior to initiating a transaction in the vending machine (claim 29). Thus, the obviousness rejection of claims 8, 13, 20, 25 and 27 through 32 is reversed.

Although Tedesco discloses a vending machine, we agree with the appellants' arguments (brief, pages 10 and 11; reply brief, pages 2 and 3) that the vending machine does not deal with insufficient change conditions (claims 8, 20 and 29), conditions under which a monetary unit should or should not be accepted (claim 25), and an allowable overpay amount (claim 29). Accordingly, the obviousness rejection of claims 8, 20, 25, 27 and 29 is reversed.

The gas dispensing pump in Ramsey has a change making capability, but it is not concerned with insufficient change conditions (claims 8, 20 and 29), conditions under which a monetary unit should or should not be accepted (claim 25), and an allowable overpay amount (claim 29) as argued by appellants (brief, pages 12 and 13; reply brief, page 3). The obviousness rejection of claims 8, 20, 25, 27 and 29 is, therefore, reversed.

In Walker, an upsell offer is used to prevent the cashier from returning any change to the customer. Inasmuch as such a teaching has little or no relevance to the change making capabilities of a vending machine, we agree with appellants' arguments (brief, pages 13 through 15) that Walker neither teaches nor would have suggested the claimed invention. In summary, the obviousness rejection of claims 8, 13, 20, 25 and 27 through 32 is reversed.

DECISION

The decision of the examiner rejecting claims 8, 13, 20, 25 and 27 through 32 under 35 U.S.C. § 103(a) is reversed.

KWH/lp

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